

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Comment Sought on Streamlining Deployment	)	WT Docket No. 16-421
of Small Cell Infrastructure by Improving	)	
Wireless Facilities Siting Policies; Mobilitie,	)	
LLC Petition for Declaratory Ruling	)	
	)	
Accelerating Wireless Broadband Deployment	)	WT Docket No. 17-79
by Removing Barriers to Infrastructure	)	
Investment	)	
	)	WT Docket No. 15-180
Revising the Historic Preservation Review	)	
Process for Wireless Facility Deployments	)	

**REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

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## EXECUTIVE SUMMARY

Competitive Carriers Association (“CCA”), on behalf of its members, applauds Chairman Pai’s clear intent to address wireless infrastructure issues comprehensively, starting as soon as the April Open Meeting. The record developed in this proceeding reflects a tremendous need for the Federal Communications Commission (“FCC” or “Commission”) to address barriers to advanced wireless services deployment, with intense focus on rural America.

Commission action on this item is critical because next-generation wireless will spur economic growth. The record makes clear that deployment will create jobs and contribute to the gross domestic product, particularly in rural areas. Many of these areas are on the wrong side of the digital divide, but the record suggests that they are likely to experience invigorated enterprise and job creation if the Commission disables state and local siting barriers. The record also confirms that local siting barriers impede deployment of wireless infrastructure, which is ultimately harmful to consumers and the nation’s economy.

Commission action is particularly important given the misconceptions that became clear on the record with respect to small cells. By way of example, many localities treat small cells the same as macrocells in their siting review processes, which results in unnecessary inefficiencies for small cell siting. CCA urges the Commission to clarify and streamline small cell deployment, particularly in light of its significance to economic growth and connectivity in rural areas.

*First*, the record makes clear that shortening Section 332 shot clocks, clarifying their scope, and providing a deemed granted remedy are needed, reasonable, and within the Commission’s authority.

*Second*, the Commission should address the unreasonable fees for applications and for use of sites and rights of way by clarifying that these fees should be based on local authorities’

actual costs. The record demonstrates that some authorities already take the approach of basing fees on recouping administrative expenses. Unfortunately, many local authorities are using fees as a revenue-generating system.

*Third*, the Commission should facilitate broadband deployment by clarifying key terms in Sections 253 and 332. Specifically, the Commission should clarify when certain practices fall under activities that “prohibit or have the effect of prohibiting” under Sections 253(a) and 332(c)(7). CCA supports the proposal in the Commission’s Draft Notice of Proposed Rulemaking to “to take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarifications of the moratorium ban or preempting specific State or local moratoria.” Along these same lines, the Commission should clarify that moratoria of any kind are prohibited—including *de facto* moratoria such as refusals to negotiate access or needlessly extending the negotiation process.

*Fourth*, the Commission can streamline NEPA and NHPA review without harming environmental or historical interests. Numerous commenters presented evidence of the significant delays caused by these reviews. CCA urges the Commission to streamline and clarify the Tribal review process under NHPA by providing guidance on fees that Tribes may request, by excluding small cells and DAS from the Section 106 historic review process, and by modifying the Tower Construction Notification System so applicants can identify areas in which Tribes have expressed an interest. The Commission should also streamline NEPA reviews by categorically exempting new structures that are less than 125 feet and located in rights of way, and by establishing shot clocks for the environmental review process.

*Finally*, the Commission should do what it can to streamline siting on federal lands and buildings, as roughly one third of land in the United States is owned by the federal government.

The record demonstrates the inefficiencies involved in federal siting. CCA therefore urges the Commission to address this topic, potentially acting as a facilitator among federal land management agencies to streamline the process.

Given the significance of broadband infrastructure deployment to economic growth and development, CCA urges the Commission to correct the many siting barriers raised in this proceeding that threaten the next-generation deployment. Commission action is necessary to address state and local challenges to deployment, as well as federal challenges, including those posed by NEPA and NHPA reviews and by the inefficiencies with siting on federal lands.

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**REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

CCA hereby submits its reply to comments filed in response to the Public Notice<sup>1</sup> in the above-captioned proceeding. The factual record developed in this proceeding reflects a tremendous need for the Commission’s leadership to ensure Americans enjoy the benefits of advanced wireless services. Commenters have shown that numerous state and local siting requirements create an environment that hinders broadband deployment, and the record suggests CCA’s proposals to reduce delays and costs and address codified inequities are reasonable and achievable. Accordingly, CCA urges the Commission to take action to expedite deployment of next-generation broadband networks and services.

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<sup>1</sup> *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd. 13, 360 (Wireless Telecomm. Bur. 2016) (“Public Notice”).

## I. INTRODUCTION AND SUMMARY.

CCA participates in this proceeding on behalf of its members, many of whom provide wireless service in rural and traditionally underserved areas.<sup>2</sup> In initial comments, CCA urged the Commission to reduce delays in the state and local wireless siting process; clarify critical terms in Sections 253 and 332 of the Communications Act<sup>3</sup> regarding wireless facility siting requests and associated application and access fees; adopt a model siting code and commence educational efforts to facilitate faster wireless broadband deployment; and take steps to further expedite the environmental and historic review process associated with wireless siting applications. CCA and other parties identified numerous barriers to deployment, including those beyond state and local jurisdictions. The record shows broad support for swift Commission action consistent with CCA's proposals, as well as additional suggestions that will streamline the wireless siting process to facilitate deployment that holds the promise of economic growth and job creation, particularly to rural areas. CCA applauds Chairman Pai's proposal to place a Notice of Proposed Rulemaking and Notice of Inquiry on these issues on the agenda for the Commission's consideration at the April Open Meeting.<sup>4</sup> The *Draft Notice and NOI* provides the avenue to further these goals and has CCA's support.

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<sup>2</sup> See Comments of Competitive Carriers Association, WT Docket No. 16-421 (filed Mar. 8, 2017) ("CCA Comments").

<sup>3</sup> See Telecommunications Act of 1996, Pub. L. 104-104, §§ 101, 704 (codified at 47 U.S.C. §§ 253, 332).

<sup>4</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Revising the Historic Preservation Review Process for Wireless Facility Deployments*, Draft Notice of Proposed Rulemaking and Notice of Inquiry, FCC-CIRC1704-03, WT Docket Nos. 17-79, 15-180 (rel. Mar. 30, 2017) ("*Draft Notice and NOI*," "*Draft Notice*" or "*Draft NOI*," as appropriate).

## **II. NEXT-GENERATION WIRELESS SERVICES WILL SPUR ECONOMIC GROWTH AND JOBS IN RURAL AMERICA.**

The record demonstrates the need for Commission action to remove deployment barriers: simply put, next-generation wireless services will fuel economic growth and create additional job opportunities. This is especially true in rural America. As CCA highlighted, deployment of next generation wireless broadband networks will “create up to three million jobs . . . and produce up to \$12.3 trillion of goods and services by 2035.”<sup>5</sup> In smaller and more remote communities where network construction creates first-time broadband users, “an additional \$90 billion in GDP, and 870,000 in job growth,” can be expected.<sup>6</sup> Rural providers serving “approximately 5 percent of the population of the United States but approximately forty percent of its landmass”<sup>7</sup> and their customers will especially benefit if the Commission removes siting barriers. As NTCA notes, rural carriers “operate in rural and tribal areas long ago left behind by larger service providers because the markets were too high-cost – too sparsely populated, too far from larger towns and cities, and/or too challenging to serve in terms of topography, terrain, and lack of subscriber density.”<sup>8</sup> Many of these areas are on the wrong side of the digital divide, but the record suggests that they are likely to experience invigorated enterprise and job creation if the Commission disables state and local siting barriers that are incongruent with those benefits or otherwise ill-suited to an increased need for small wireless antennas and fiber.<sup>9</sup>

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<sup>5</sup> CCA Comments at 5.

<sup>6</sup> *Id.* (quotation omitted).

<sup>7</sup> Comments of NTCA-The Rural Broadband Association at 2, WT Docket No. 16-421 (filed Mar. 8, 2017) (“NTCA Comments”).

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g., id.* at 3 (describing how addressing 5G deployment challenges necessitates streamlining fiber deployment as well as wireless equipment).



Other commenters presented similar evidence regarding the importance of next-generation wireless broadband services to the economy and job creation. For example, the U.S. Black Chambers states that “[n]ext generation networks will also power the Internet of Things and smart communities that will generate new jobs and opportunities as well as create new innovative technologies to improve our quality of life.”<sup>10</sup> The Information Technology and Innovation Foundation (“ITIF”) notes that “[t]he wireless industry touches an increasing number of key verticals throughout economy, so U.S. wireless policy has a compounding effect in advancing productivity and growth.”<sup>11</sup> The U.S. Chamber of Commerce references a report published by Deloitte finding that various industries will leverage new wireless technologies, which in turn will produce “substantial economic investment and job development throughout the country.”<sup>12</sup> Various commenters cite a study by Accenture Strategy which concluded that the deployment of 5G wireless networks “is expected to create three million new jobs in communities of all sizes across the country and boost the U.S. GDP by half a trillion dollars.”<sup>13</sup> These figures underscore the importance of the Commission’s speedy action.

To maximize these benefits, the Commission must move promptly to address the siting challenges associated with the deployment of next-generation wireless networks, such as by adopting the *Draft Notice and NOI*. As T-Mobile notes, absent Commission action, “local siting

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<sup>10</sup> Letter from Ron Busby, Sr., President & CEO, U.S. Black Chambers, Inc., to Chairman Ajit Pai, FCC, at 1, WT Docket No. 16-421 (filed Mar. 8, 2017).

<sup>11</sup> Comments of ITIF at 2, WT Docket No. 16-421 (filed Mar. 8, 2017) (“ITIF Comments”).

<sup>12</sup> Letter from William L. Kovacs, Senior Vice President – Environment, Technology & Regulatory Affairs, Chamber of Commerce of the United States of America, to Marlene H. Dortch, Secretary, FCC, at 2, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Chamber of Commerce Letter”).

<sup>13</sup> Comments of CTIA at 7-8, WT Docket No. 16-421 (filed Mar. 8, 2017) (“CTIA Comments”). *See also* Chamber of Commerce Letter at 2; ITIF Comments at 2-3.

and zoning barriers—including laws crafted to handle larger macro sites but not less impactful small cells—threaten to impede deployment of that infrastructure to the detriment of consumers, the nation, and our economy.”<sup>14</sup> Similarly, Sprint urges the Commission to act because “[l]ack of access to right of way structures, excessive fees, and untenable processes and delays from local governments for permitting and installing small cells have become a major barrier to investment in the mobile economy.”<sup>15</sup>

While several states and localities acknowledge the many benefits wireless service can bring the public,<sup>16</sup> some comments filed by state and local authorities continue to reflect a disconnect between actually experiencing those economic and quality-of-life benefits, and the need to adapt their review processes to accommodate rapid small cell and DAS deployment and to eliminate excessive cost and unnecessary delay. Their arguments appear to be based on several misconceptions regarding small cell deployment and design. For example, some localities oppose steps to facilitate the deployment of small cells based on the erroneous assumption that deployment will trigger the proliferation of large macrocells in rights of way.<sup>17</sup> To the contrary, CCA generally agrees that macrocells merit more stringent review than small cells. The record confirms CCA members’ experience, however, that localities often apply the

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<sup>14</sup> Comments of T-Mobile USA, Inc. at 5, WT Docket No. 16-421 (filed Mar. 8, 2017) (“T-Mobile Comments”).

<sup>15</sup> Comments of Sprint Corporation at i, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Sprint Comments”).

<sup>16</sup> *See, e.g.*, Comments of City of Henderson, Nevada at 4-5, WT Docket No. 16-421 (filed March 8, 2017); Comments of TechFreedom at 5, WT Docket No. 16-421 (filed Mar. 8, 2017).

<sup>17</sup> *See, e.g.*, Comments on behalf of the following cities in Washington State: Bellevue, Bothell, Burien, Ellensburg, Gig Harbor, Kirkland, Mountlake Terrace, Mukilteo, Normandy Park, Puyallup, Redmond and Walla Walla at 8-9, WT Docket No. 16-421 (filed Mar. 8, 2017).

same review process, including the same review timeframes, regardless of whether a facility is a macrocell or small cell.<sup>18</sup>

Clearing up another misunderstanding, the Commission's action to clarify and streamline small cell deployment will remove, not create, confusion.<sup>19</sup> CCA agrees with T-Mobile that a "small cell should be defined to mean any wireless antenna that meets the volumetric limits in Section VI.A.5 of the First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas . . . or any such broader definition as the Commission may adopt."<sup>20</sup> This definition already is utilized by the Commission, the Advisory Council on Historic Preservation ("ACHP"), and the National Conference of State Historic Preservation Officers, and therefore would not cause confusion. As Sprint notes, many small cell deployments are actually much smaller than the limits in the proposed definition.<sup>21</sup> Importantly, none of the proposed changes would restrict the ability of state and local authorities to review

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<sup>18</sup> See, e.g., Comments of the City of Austin, Texas at 5-6, WT Docket No. 16-421 (filed Mar. 8, 2017) ("City of Austin Comments"); Comments of Cityscape Consultants, Inc. at 4, WT Docket No. 16-421 (filed Mar. 8, 2017); Comments of Extenet Systems, Inc. at 7, WT Docket No. 16-421 (filed Mar. 8, 2017) ("Extenet Systems Comments"); Letter from Mayor Jude Hehman, Chair - Kenton County Mayors Group, to Marlene H. Dortch, Secretary, FCC, at 3-4, WT Docket No. 16-421 (filed Feb. 28, 2017) ("Kenton County Mayors Letter"); T-Mobile Comments at 6-7; Comments of the Wireless Infrastructure Association at 7, WT Docket No. 16-421 (filed Mar. 8, 2017) ("WIA Comments").

<sup>19</sup> See Comments of the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Towns and Townships, the National Association of Counties, the National Association of Regional Councils, and the Government Finance Officers Association at 11, WT Docket No. 16-421 (filed Mar. 8, 2017).

<sup>20</sup> T-Mobile Comments at 37 n.113; see *Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 31 FCC Rcd. 8824 (Wireless Telecomm. Bur. 2016).

<sup>21</sup> Sprint Comments at 6.

proposals to ensure safety<sup>22</sup> or to require siting applicants to correct erroneous or incomplete siting applications.

### **III. THE COMMISSION CAN CREATE EFFECTIVE AND REASONABLE SHOT CLOCKS THAT RESPECT LOCAL INTERESTS.**

The record demonstrates that shortening the Section 332 shot clocks, clarifying their scope, and providing a deemed granted remedy are all critical if we want rural Americans to have access to modern wireless services. These changes would simplify and expedite broadband deployment, paving the way for next generation networks and an accompanying infusion of economic activity.

#### **A. The Record Reflects Broad Support for Shortening the Section 332 Shot Clocks.**

CCA continues to urge the Commission to shorten the Section 332 shot clocks to 30 days for collocations and 75 days for new sites.<sup>23</sup> The record reflects broad support for shortening the Section 332 shot clocks applicable to local siting decisions on wireless applications<sup>24</sup> and indicates that the timeframes proposed by CCA are reasonable. Many jurisdictions already have adopted regulations consistent with, or more aggressive than, the proposed deadlines. For

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<sup>22</sup> See, e.g., T-Mobile Comments at 21 n.53; Comments of AT&T at 25, WT Docket No. 16-421 (filed Mar. 8, 2017) (“AT&T Comments”); CTIA Comments at 14; WIA Comments at 27.

<sup>23</sup> CCA Comments at 11. CCA supports others on record proposing a 60-day shot clock for collocations, as review can reasonable be accomplished within this timeframe and would speed needed broadband deployment. See, e.g., T-Mobile Comments at 23; CTIA at 34-38.

<sup>24</sup> See, e.g., Crown Castle International Corp. at 37-38, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Crown Castle Comments”); CTIA Comments at 36-37; ExteNet Comments at 19, 36-39; Comments of Globalstar, Inc. at 11, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Globalstar Comments”); Comments of Mobile Future at 4-5, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Mobile Future Comments”); Comments of Mobilitie, LLC at 19, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Mobilitie Comments”); T-Mobile Comments at 23; WIA Comments at 23-24, 58.

example, Dublin, Ohio completes collocation reviews in 28 days or less.<sup>25</sup> In Houston, Texas, the review process for small cell deployments, such as collocations, “usually takes 2 weeks, but no more than 30 days to process and complete the site review.”<sup>26</sup> In Kenton County, Kentucky, the maximum time permitted to act upon new facility siting requests is 60 days.<sup>27</sup> Louisville, Kentucky generally processes small cell siting requests within 30 days,<sup>28</sup> and Matthews, North Carolina generally processes wireless siting applications within 10 days.<sup>29</sup> Therefore, based on the record, the Commission may abbreviate shot clocks confident that this action is needed to address delays and uncertainty throughout the siting process without unduly burdening local and state authorities.

**B. Section 332 Shot Clocks Should Include a Deemed Granted Remedy.**

CCA urges the Commission to follow through on the proposal in the *Draft Notice* to adopt a deemed granted remedy.<sup>30</sup> A number of other parties echoed CCA’s call for Commission action.<sup>31</sup> Such an approach would be consistent with the process set forth in Section 6409(a), as well as Chairman Pai’s desire to “give our shot clock some teeth by adopting

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<sup>25</sup> Comments by the City of Dublin, Ohio at 8, WT Docket No. 16-421 (filed Mar. 7, 2017) (“City of Dublin Comments”).

<sup>26</sup> Comments of the City of Houston, Texas at 3, WT Docket No. 16-421 (filed Mar. 8, 2017) (“City of Houston Comments”). To provide some context, Houston’s siting review process for new macro tower deployments takes 2-4 weeks, provided that a variance is not required. *See id.* at 4.

<sup>27</sup> Kenton County Mayors Letter at 7.

<sup>28</sup> Comments of Louisville/Jefferson County, Kentucky Metro Government at 6, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Louisville Comments”).

<sup>29</sup> Comments of the Town of Matthews NC at 2, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Town of Matthews Comments”).

<sup>30</sup> *Draft Notice* ¶ 8; *see also* CCA Comments at 11-13.

<sup>31</sup> *See, e.g.*, AT&T Comments at 25-26; Crown Castle Comments at 33-34; CTIA Comments at 39-43; Globalstar Comments at 12; Sprint Comments at 22-27; T-Mobile Comments at 25; Verizon Comments at 23; WIA Comments at 61-62.

a ‘deemed-grant’ remedy.”<sup>32</sup> A deemed granted approach should not be unduly burdensome as a number of jurisdictions already have adopted this approach.<sup>33</sup>

### **C. The Commission Should Clarify the Scope of the Section 332 Shot Clocks.**

In addition to shortening the Section 332 shot clocks and adopting a deemed granted remedy, CCA agrees with commenters urging the Commission to clarify that the Section 332 shot clocks broadly apply to applications to site facilities in rights of way and are not limited to only local “zoning” decisions.<sup>34</sup> To that end, the Commission should provide that shot clock deadlines encompass all necessary components of local approvals, such as the right of way access and lease negotiation processes.<sup>35</sup> Shot clocks should also apply to “batch” applications, once application parameters are more clearly defined.<sup>36</sup> To this end, where a company submits a batch of applications proposing ten small cell collocations, a jurisdiction should not be allowed to claim that the applications are not subject to the Section 332 shot clocks or to use batching of applications as a basis for extending the shot clocks.<sup>37</sup> Absent these clarifications, localities can circumvent the shot clock deadlines in many instances. For example, when an entity approaches a locality with a request to collocate a small cell on existing infrastructure within a right of way,

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<sup>32</sup> Ajit Pai, Commissioner, FCC, Remarks at CCA’s 2016 Annual Convention, Seattle, WA at 2 (Sept. 21, 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-341365A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-341365A1.pdf).

<sup>33</sup> *See, e.g.*, Kenton County Mayors Letter at 1; Initial Comments of Lighttower Fiber Networks at 13, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Lighttower Fiber Networks Comments”); Comments of the City and County of San Francisco at 26, WT Docket No. 16-421 (filed Mar. 8, 2017).

<sup>34</sup> *See, e.g.*, CCA Comments at 12; CTIA Comments at 43-46; Mobilite Comments at 18-21.

<sup>35</sup> *See, e.g.*, CCA Comments at 12; T-Mobile Comments at 30-33; Comments of Verizon at 30-31, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Verizon Comments”).

<sup>36</sup> *See, e.g.*, Crown Castle Comments at 37-38; Globalstar Comments at 12; Sprint Comments at 43-44.

<sup>37</sup> *See* City of Houston Comments at 11; Kenton County Mayors Letter at 7-9; Comments of League of Nebraska Municipalities at 1, WT Docket No. 16-421 (filed Mar. 8, 2017).

the locality should not be permitted to claim that it is acting in a proprietary rather than regulatory capacity and leave the right of way access request pending indefinitely.<sup>38</sup> The locality must be required to act promptly for shot clocks to serve their purpose and actually spur broadband deployment.

**D. The Proposed Shot Clock Modifications Will Still Allow Local Authorities to Protect Local Interests.**

The shot clock modifications suggested herein will continue to provide local authorities with ample opportunity to protect local interests. The fact that a number of local jurisdictions already have adopted regulations consistent with the shot clock modifications described above is the best evidence that the proposed modifications will not restrict local authorities from protecting local interests.<sup>39</sup>

**IV. THE COMMISSION SHOULD REIN IN UNREASONABLE FEES.**

The record shows that unreasonable application fees and unreasonable fees for use of sites and rights of way deter or even prevent broadband deployment. Addressing these excesses by providing guidance as to the meaning of Section 253 is a simple but significant step the Commission can take to accelerate broadband deployment in rural America. The Commission should clarify that application processing fees and fees for use of rights of way should be based on authorities' actual costs.<sup>40</sup>

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<sup>38</sup> See, e.g., CCA Comments at 12, 26-27; T-Mobile Comments at 30-31; Verizon Comments at 30-31.

<sup>39</sup> See, e.g., City of Dublin Comments at 8; City of Houston Comments at 3; Kenton County Mayors Group Comments at 7; Louisville Comments at 6; Town of Matthews Comments at 2.

<sup>40</sup> See also Globalstar Comments at 14; Lightower Fiber Networks Comments at 27, 29; Mobilitie Comments at 17; Sprint Comments at 32; WIA Comments at 69; T-Mobile Comments at 24.

Some authorities already take this approach. For example, the City of Austin, Texas states that its fees are designed to recoup only actual administrative expenses.<sup>41</sup> The Town of Cary, North Carolina states that application fees are cost-based, and it does not impose recurring fees for access to rights of way.<sup>42</sup> In fact, some state laws already prohibit localities from charging more than the direct and actual costs associated with permitting and managing rights of way.<sup>43</sup>

Unfortunately, the record reflects that other permitting authorities use the fee system as a revenue-generating opportunity.<sup>44</sup> For example, some municipalities charge excessive recurring fees – in some cases tens of thousands of dollars – for access to rights of way.<sup>45</sup> The record shows that in some cases, unreasonable fees have delayed deployment or led carriers to choose not to deploy in those areas at all.<sup>46</sup> Others charge “franchise fees” based on the applicant’s revenues, which in no sense can be said to be related to the locality’s costs.<sup>47</sup> As Mobilitie noted

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<sup>41</sup> See City of Austin Comments at 8.

<sup>42</sup> See Comments of Cary, North Carolina at 3, WT Docket No. 16-421 (filed Mar. 8, 2017).

<sup>43</sup> See Comments of the Association of Washington Cities at 2, WT Docket No. 16-421 (filed Mar. 8, 2017); Comments of Mid-Ohio Regional Planning Commission at 2, WT Docket No. 16-421 (filed Mar. 8, 2017); WIA Comments at 69 n.158 (citing statutes from California, Minnesota, and Utah).

<sup>44</sup> See, e.g., AT&T Comments at 18; CTIA Comments at 15-16; Verizon Comments at 8-10; T-Mobile Comments at 10-11.

<sup>45</sup> See, e.g., Sprint Comments at 24.

<sup>46</sup> See Verizon Comments at 8-9 (providing examples of delays in deployment due to negotiations over unreasonable fees); Sprint Comments at 24 (“in many circumstances, Sprint and Mobilitie have declined, for the time being, to enter into an agreement with the jurisdictions that insist on extremely high fees.”).

<sup>47</sup> See AT&T Comments at 19; Comments of Conterra Broadband Services and Uniti Fiber at 18-19, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Conterra Broadband Services and Uniti Fiber Comments”); CTIA Comments at 16; Sprint Comments at 27-28; Chamber of Commerce Letter at 3.



in its Petition, “[c]ourts have observed that local governments’ *de facto* monopoly control over public rights of way creates the ‘danger that local governments will exact artificially high rates’ for the use of public rights of way.”<sup>48</sup> To address the chilling effect of these fees on broadband deployment, the Commission should clarify that under Section 253, fees should be cost-based and limited to actual administrative expenses associated with processing applications and managing rights of way.<sup>49</sup>

The Commission also should address charges levied by consultants used by localities to evaluate and process wireless siting applications.<sup>50</sup> While some localities suggest that they do not have the resources to review applications without hiring consultants,<sup>51</sup> this need does not give consultants complete control to charge anything they want to perform a government function. The Commission should not encourage the expansion of a cottage industry that drives up costs for the wireless industry, and therefore consumers.<sup>52</sup>

Finally, consistent with the express language of Section 253(c), the Commission also should declare that any charges imposed by localities that are not publicly disclosed are impermissible.<sup>53</sup> In addition to being consistent with the statute, transparency furthers important

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<sup>48</sup> Petition for Declaratory Ruling at 4, WT Docket No. 16-421 (filed Nov. 15, 2016) (“Mobilitie Petition”).

<sup>49</sup> Indeed, fees associated with fiber for backhaul equally need to be reasonable, as wireless networks depending on fiber as much as on towers. *See, e.g.*, Conterra Broadband Services and Uniti Fiber Comments at 7; NTCA Comments at 3-4.

<sup>50</sup> *See* Comments of Nokia at 6-8, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Nokia Comments”); T-Mobile Comments at 11; WIA Comments at 13.

<sup>51</sup> *See, e.g.*, Comments of Town of Colonie, New York in Response to the Public Notice (Dec. 22, 2016) in WT Docket No. 16-421 at 1, WT Docket No. 16-421 (filed Mar. 8, 2017).

<sup>52</sup> *See* Nokia Comments at 6-8.

<sup>53</sup> *See* Mobilitie Petition at 34-35; *see also* Comments of Conterra Broadband Services and Uniti Fiber Comments at 23; Lighttower Fiber Networks Comments at 27-28.

policy aims. It promotes fairness in the fee process by making apparent to the public when fees are unreasonable, and it promotes the statutory requirement that fees are “non-discriminatory” by ensuring that applicants know the fees charged on like-situated competitors. The Commission should take these simple steps to pave the way for modern wireless deployments.

**V. THE COMMISSION SHOULD FACILITATE WIRELESS BROADBAND DEPLOYMENT BY CLARIFYING SECTIONS 253 AND 332.**

CCA applauds the proposal to adopt a Notice of Inquiry at the April Open Meeting to clarify the meaning of key terms of Sections 253 and 332.<sup>54</sup> As the *Draft NOI* notes, the phrase “prohibit or have the effect of prohibiting” in Sections 253(a) and 332(c) has been interpreted inconsistently in the courts.<sup>55</sup> Establishing a clear, national interpretation would simplify deployment and set expectations for providers with operations within the boundaries of different circuit courts. In addition, CCA continues to urge the Commission “to identify specific state and local government actions that unlawfully ‘prohibit or have the effect of prohibiting’ an entity’s ability to provide ‘personal wireless services’ under Section 332(c)(7) or ‘telecommunications service’ under Section 253(a).”<sup>56</sup> In its comments, CCA recommended that the Commission declare that state and local government practices that make wireless siting uneconomic or impractical run afoul of Sections 332 and 253,<sup>57</sup> and notes that the record contains numerous requests for similar declarations. In particular, CCA supports T-Mobile’s call for the Commission to clarify that a regulation prohibits or effectively prohibits service contrary to Section 253(a) if it either (i) “materially inhibits or limits” the ability of any competitor to

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<sup>54</sup> See *Draft NOI* ¶¶ 83-94.

<sup>55</sup> See *id.* ¶ 87.

<sup>56</sup> CCA Comments at 23 (internal citation omitted).

<sup>57</sup> *Id.* at 24.

compete, *or* (ii) creates a “substantial barrier” to the provision of any telecommunication service.<sup>58</sup>

CCA also supports a Commission declaration that carriers need not show an actual prohibition of service to trigger Section 253, and that all forms of moratoria (whether express or *de facto*) are prohibited.<sup>59</sup> CCA urges the Commission to adopt the proposal in the *Draft Notice* “to take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarifications of the moratorium ban or preemption specific State or local moratoria.”<sup>60</sup> The Commission should specifically clarify that prohibited *de facto* moratoria also encompass refusals to negotiate access to rights of way, or refusing to negotiate access to poles and other vertical structures in rights of way, as well as needlessly extending the negotiating process.<sup>61</sup> As Sprint explains, the Commission created a rule whereby local government moratoria on infrastructure deployment are “presumptively unreasonable” if the locality refuses to act on permit applications and causes delays exceeding 150 days for new sites or 90 days for collocations; but, this does not encompass *de facto* moratoria where a local authority simply refuses to negotiate.<sup>62</sup> The Commission should expand the scope of its existing rule to provide that any moratoria, either formal or *de facto*, do not pause shot clocks. This solution would not

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<sup>58</sup> T-Mobile Comments at 17 (quotations omitted).

<sup>59</sup> *See, e.g.*, AT&T Comments at 10; CTIA Comments at 25-26; Mobile Future Comments at 3-4; Mobilitie Comments at 18; T-Mobile Comments at 18-19.

<sup>60</sup> *Draft Notice* ¶ 20.

<sup>61</sup> *See, e.g.*, NTCA Comments at 4; Sprint Comments at 17-20.

<sup>62</sup> *See* Sprint Comments at 17 (citing *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd. 12,865, 12,972 ¶ 267 (2014), *aff’d*, *Montgomery Cty. v. FCC*, 811 F.3d 121 (4th Cir. 2015)).

stop state or local authorities from denying an inappropriate or unwanted siting project, yet would truncate what the record shows is a frequently-seized opportunity for delay.<sup>63</sup>

CCA also urges the Commission to proceed with the proposal to seek comment on clarifying that requiring demonstrations of any particular sort of service needs, network design, or business plans violates Section 332(c), or, alternatively, Section 253 by effectively prohibiting service and unreasonably discriminating.<sup>64</sup> CCA members and others on record indicate that many local authorities require competitive carriers to provide proof that a specific project is designed to upgrade or cover capacity, as if there could be any other reason for the deployment. Capacity is now critical to ensure the availability of desired data-intensive services, and, as indicated on the record, upgrading networks involves a multitude of different technological standards and spectrum, which denote different equipment, antenna height, and spacing.<sup>65</sup> For example, wireless coverage from a macrocell covering multiple city blocks is no longer sufficient in many circumstances to provide robust service to all customers in those areas; forcing carriers to break down the economics of small cell deployment to enhance macro cell coverage in such a situation, and proving doing so is the “least intrusive means,” just drags out the process without discernable benefit.<sup>66</sup>

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<sup>63</sup> See, e.g., NTCA Comments at 4; Sprint Comments at 17-19.

<sup>64</sup> See *Draft NOI* ¶ 86; see also Mobilitie Comments at 12-13, 18; T-Mobile Comments at 20 (arguing that a locality, by imposing siting requirements that question a carrier’s network design, violates Section 332 by preventing a technology upgrade and therefore the requirement has the effect of prohibiting service provision); Sprint Comments at 21-22.

<sup>65</sup> See, e.g., Sprint Comments at 22.

<sup>66</sup> See, e.g., T-Mobile Comments at 20 (noting that in urban areas especially, filling in coverage “gaps” is far less pressing than the need to “fill in sites to expand capacity and support technology upgrades necessary to keep up with consumer demand”).

Although some state and local authorities are working to address these issues, either through industry collaboration or legislative changes,<sup>67</sup> this process is too slow and impedes the rapid deployment of wireless services, particularly in rural and traditionally underserved areas. Commission action is needed to provide clarity so that the statutory goals of removing barriers to deployment can be achieved.

**VI. FIXING THE NHPA/NEPA REVIEW PROCESSES WILL EXPEDITE WIRELESS DEPLOYMENT WITHOUT JEOPARDIZING ENVIRONMENTAL OR HISTORIC RESOURCES.**

The Commission should amend its rules to further streamline the review processes under the National Environmental Policy Act of 1969 (“NEPA”) and the National Historic Preservation Act of 1966 (“NHPA”). The record reflects that this review process significantly delays deployments.<sup>68</sup> Accordingly, there is widespread support for streamlining.<sup>69</sup> Specifically, limiting the scope of a “federal undertaking” and “major” federal action under, respectively, NHPA and NEPA will place common-sense exclusions in line with the Commission’s determination that small cells and DAS pose little, if any, aesthetic or environmental threat. The record demonstrates that such streamlining would expedite wireless broadband deployment without jeopardizing environmental or historic resources.

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<sup>67</sup> See, e.g., 53 PA. CONS. STAT. § 11702.3(a)(6) (forbidding the local authority from requiring a collocation applicant “to justify the need for or the technical, business or service characteristics of the proposed wireless telecommunications facilities”).

<sup>68</sup> See, e.g., CCA Comments at 35-36; CTIA Comments at 47; NTCA Comments at 5.

<sup>69</sup> See, e.g., CCA Comments at 35; CTIA Comments at 47; Sprint Comments at 44-48; T-Mobile Comments at 36-41.

### **A. Streamlining Historic Review Under the NHPA.**

The *Draft Notice* correctly puts front and center the need to examine the NHPA process.<sup>70</sup> CCA especially urges the Commission to streamline and clarify the Tribal review process. CCA respects Tribal history and cultural heritage. Unfortunately, the current process “is a material impediment to broadband deployment” and can be streamlined without compromising historic assets.<sup>71</sup> The many comments on record supporting these and similar reforms of the historic review process suggest Commission action to reform NHPA implementation is urgently needed to deflate unnecessary costs and speed cost-effective deployment.<sup>72</sup>

As the Commission implicitly acknowledges in the *Draft Notice*, there are several steps the Commission can take to streamline NHPA reviews. First, the Commission should explain when Tribal fees are appropriate or mandatory as part of the consultation process. It would be helpful for the Commission to clarify, for instance, that payment is not mandatory when a Tribe demands fees that conflict with the Commission’s or ACHP’s guidance, or when fees appear wholly unrelated to accomplishing the NHPA’s intended purpose to protect historic properties.<sup>73</sup> Second, consistent with these comments, the Commission should exclude small cells and DAS from the Section 106 historic review process, either by excluding them from the definition of a “Federal undertaking,” or by finding that the deployment of such facilities would not likely have

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<sup>70</sup> See *Draft Notice* ¶ 32 & n.73 (citing CCA’s comments regarding how current processes “results in significant delays in the execution of [wireless providers’] deployment plans”).

<sup>71</sup> CCA Comments at 39.

<sup>72</sup> See, e.g., CCA Comments at 36-43; CTIA Comments at 47; Sprint Comments at 44-47; T-Mobile at 36-37.

<sup>73</sup> See CCA Comments at 40.

an adverse impact on historic resources and should be exempt from review.<sup>74</sup> Finally, CCA urges the Commission to modify the Tower Construction Notification System (“TCNS”) so that applicants can identify areas in which Tribes have expressed an interest. This will allow applicants to proactively address Tribal interests by avoiding deployments in such areas.<sup>75</sup>

Adopting these proposals will focus NHPA compliance efforts and will reduce incidents, like those on record, where NHPA compliance for an unobtrusive small cell resulted in arbitrary fees without any comprehensive historical review, and without any finding of harm. In the current deployment climate, dense siting and fiber deployment are key; Tribal fees and delays add up quickly, especially with respect to small cell deployment, and are an increasingly pervasive impediment to advanced broadband service provision. The Commission should build on prior efforts in its upcoming rulemaking to address unreasonable processes.

#### **B. Streamlining Environmental Review Under NEPA.**

The NEPA review process significantly delays wireless deployments, often with little corresponding benefit. As suggested by Sprint, the Commission should consider categorically exempting from NEPA review all new structures that are less than 125 feet and located in rights of way.<sup>76</sup> Such structures, especially poles, play host to small cells and DAS and are important components for advanced services deployment. Because these projects involve already-disturbed ground and extant facilities deployed in rights of way, the addition of small towers in these areas should not have an adverse environmental impact. Accordingly, a categorical exemption from NEPA review is justified. CCA was pleased that the *Draft Notice* seeks

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<sup>74</sup> See Verizon Comments at 36.

<sup>75</sup> See CCA Comments at 41-42.

<sup>76</sup> See Sprint Comments at 48.

comment on whether a new categorical exclusion for small cells and DAS facilities would assuage the NEPA review costs without compromising environmental protections<sup>77</sup> as well whether the Commission should revisit its interpretation of its scope of responsibility to review the effects of small wireless construction over NEPA.<sup>78</sup> If the *Draft Notice* is favorably voted at the April Open Meeting, these proposals should continue a promising discussion regarding reducing unnecessary NEPA costs and delays, which “impose huge costs on network deployment with little to nothing in the way of corresponding benefits.”<sup>79</sup>

The Commission should also establish shot clocks governing the environmental review process and resolution of environmental disputes.<sup>80</sup> Such an approach would provide certainty and improve deployment planning.

## **VII. THE COMMISSION SHOULD ACT TO EASE WIRELESS BROADBAND DEPLOYMENT ON FEDERAL LANDS AND BUILDINGS.**

Many joined CCA in urging the Commission to take steps to expedite broadband deployment on federal lands.<sup>81</sup> This is absolutely essential—the federal government owns roughly *one-third* of the land in the United States.<sup>82</sup> Access to these lands for wireless siting is not optional if we are to bring modern services to rural and traditionally underserved areas, and the delays and costs of access too frequently caused by the federal land siting process are ultimately borne by the Americans living, working, and traveling in these areas. Congress

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<sup>77</sup> See *Draft Notice* at ¶ 61.

<sup>78</sup> See *id.* at ¶ 72.

<sup>79</sup> See Sprint Comments at 48.

<sup>80</sup> See T-Mobile Comments at 39.

<sup>81</sup> See CCA Comments at 35; NTCA Comments at 4-5, 8 n.17; Globalstar Comments at 15-16.

<sup>82</sup> See FCC, *Connecting America: The National Broadband Plan* at 115 (Mar. 17, 2010), <https://www.fcc.gov/general/national-broadband-plan>.



attempted to spur wireless broadband deployment on federal lands through enactment of Sections 6409(b) and (c) of the Spectrum Act, which directed the Administrator of the General Services Administration to establish master contracts and forms for wireless siting.<sup>83</sup> This process has been too slow, and CCA members have not felt the benefits. Similarly, the Federal Lands Working Group created by Executive Order 13616 has produced a draft Program Comment to facilitate faster deployment, but the document falls short of its intended goal.<sup>84</sup>

CCA urges the Commission to seek comment on this topic in the *Draft Notice*. The Commission could possibly act as a facilitator among federal land management agencies to do what Chairman Pai proposed in his Digital Empowerment Agenda: consolidate information about federal assets that could be used to aid broadband deployment into a collection that provides useful information to providers interested in deploying in these areas; establish reasonable shot clocks for reviewing applications and negotiating leases to build on federal

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<sup>83</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(b)-(c), 126 Stat. 156 (2012).

<sup>84</sup> For example, the current draft Program Comment does not specify a lead agency when a project crosses multiple federal agency jurisdictions. In its current form, the Program Comment is not applicable to all federal lands and properties, and federal agencies with their own implementing rules are free to ignore the Program Comment. The current draft also fails to specify that the Section 106 review process is not needed for projects determined to have no adverse effect, and too narrowly exempts collocations and other small wireless equipment. While members welcomed some aspects of the draft Program Comment's approach to wireline deployments, many revisions are needed. See *ACHP Extends Comment Period on Proposed Broadband on Federal Property Program Comment*, ADVISORY COUNCIL ON HISTORY PRESERVATION (Feb 17, 2017), <http://www.achp.gov/broadband.html>; see also *Draft Program Comment for Telecommunications Projects on Federal Property* (Jan. 13, 2017), <http://www.achp.gov/docs/Telecommunications%20Projects.pdf>; Comments of Competitive Carriers Association, *Draft Program Comment for Telecommunications Projects on Federal Property* at 1-4 (filed Feb. 3, 2017), <http://www.achp.gov/docs/Broadband%20PC%20comments%202%20of%203.pdf>.

lands; and minimize and standardize any fees for permits and leasing rights-of-way, and agree to longer-term leases or easements.<sup>85</sup>

## **VIII. CONCLUSION.**

Broadband infrastructure deployment is among America's best vehicles to create economic opportunity, innovation and jobs in areas on the wrong side of the digital divide. For well-connected locations, correcting siting barriers imbedded throughout various state and local codes will fast-track those communities to unprecedented connection speeds and advanced 5G services. The substantial record developed in this proceeding empowers the Commission to facilitate this progress and prosperity by issuing a declaratory ruling clarifying certain aspects of Sections 332 and 253 of the Communications Act to expedite competitive broadband network deployment. CCA supports this course of action and urges the Commission to move forward in the short term.

Respectfully submitted,

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<sup>85</sup> See Ajit Pai, Commissioner, FCC, Remarks at the Brandery: A Digital Empowerment Agenda at 8 (Sept. 13, 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-341210A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf).